

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION



SDMS DocID 000223744

UNITED STATES OF AMERICA,)
STATE OF CONNECTICUT,)
COMMONWEALTH OF)
MASSACHUSETTS,)
Plaintiffs,)
v.)
GENERAL ELECTRIC COMPANY,)
Defendant.)

CIVIL ACTION NOS.
99-30225, 99-30226, 99-30227-MAP
(Consolidated)

**MOTION OF PLAINTIFF UNITED STATES TO MODIFY
CONSENT DECREE AND STATEMENT OF WORK^{1/}**

The United States hereby moves to modify the Consent Decree entered by this Court on October 27, 2000 ("Consent Decree" or "Decree"). The proposed modification is consented to by all the necessary parties as outlined under the Consent Decree. The Decree resolves the consolidated actions listed above which were filed by the United States, the Commonwealth of Massachusetts and the State of Connecticut (collectively the "governments" or "Plaintiffs") against the General Electric Company ("GE") related to the contamination at the GE-Pittsfield/Housatonic River Site ("Site"). The City of Pittsfield and the Pittsfield Economic Development Authority ("PEDA") are also parties to the Consent Decree. Pursuant to the Consent Decree, GE is required to perform and/or pay for response actions to remediate

^{1/}This motion is agreed to by all other Plaintiffs and by the Defendant in this action – i.e., Plaintiffs State of Connecticut and Commonwealth of Massachusetts, and Defendant General Electric Company. The City of Pittsfield, and the Pittsfield Economic Development Authority, which are also parties to the Consent Decree, do not object to this Motion.

contamination at the Site, to reimburse the Plaintiffs certain response costs incurred with respect to the Site, and to take actions to address damages to natural resources.

The Consent Decree sets forth the procedure for modifying the Decree. Decree ¶¶ 215-219. In particular, the Decree provides that no material modification to the Statement of Work (“SOW”) shall be made without “written notification to and written approval of the United States, Settling Defendant, and the Court.” Decree ¶ 216. The Decree also provides that “any modifications to the Performance Standards may be made only by written notification to and written approval of the United States, Connecticut, the State, Settling Defendant and the Court.” Decree ¶ 217. Connecticut, the State (Massachusetts), and the Settling Defendant (General Electric Company (“GE”)) have all provided their written approval of the proposed modification.

The parties to the Consent Decree have made two prior modifications to the Consent Decree. First, on February 6, 2002, the United States filed a First Modification to the Consent Decree which provided for six non-material modifications to the Consent Decree, including the following modifications: inclusion of an additional property in the Decree; modification of the Peer Review Process; modification to the schedule for the submission of Environmental Restrictions and Easements; modification to the schedule for submission of initial Removal Design/Action Work Plans; an addendum to the Upper ½ Mile Reach Removal Action Work Plan; and a modification to the location for payments to the Commonwealth of Massachusetts.

Second, on May 15, 2003, the Court approved a Second Modification to the Consent Decree, to modify the agreement for EPA recovery from GE of “Indirect Costs” incurred with respect to the Site. This Second Modification documents a settlement of a dispute that GE raised

regarding the methodology EPA used to calculate Indirect Costs related to the 1 ½ Mile Reach Removal Action.

Pursuant to Paragraphs 216 and 217 of the Consent Decree, the United States hereby requests that the Court approve an additional modification of the Consent Decree and of the Statement of Work for Removal Actions Outside the River, which is Appendix E to the Consent Decree (the “SOW”). This Third Modification of the Consent Decree (“Third Modification”), which has been entered into by Plaintiffs and GE, is attached hereto. Massachusetts, Connecticut, and GE also assent to this Motion. Pursuant to Paragraphs 216 and 217 of the Consent Decree, written notification of the Modification has also been provided to the City of Pittsfield (“the City”) and PEDAs. The City and PEDAs have no objection to this Motion or the Third Modification.

I. Description of Proposed Third Modification

Among GE’s obligations under the Consent Decree are a number of activities to enhance and/or restore natural resources. The GE-owned Lyman Street parking lot adjacent to the Housatonic River (the “River”) is scheduled in the Consent Decree to be the location of a natural resource restoration/enhancement project to be implemented by GE. Consent Decree ¶ 118.d(iv); SOW, Section 2.8; SOW, Attachment I; SOW, Figure I-2. Specifically, GE is required to enhance the habitat of the Lyman Street parking lot, which is currently paved, through the installation of an engineered barrier, the planting of herbaceous vegetation, and completion of other natural resource restoration/enhancement measures in accordance with specific Performance Standards and implementation requirements. Consent Decree ¶ 118.d(iv); SOW, Attachment I, Sections 3.0, 3.1 and 3.2. The area of the Lyman Street parking lot subject

to the natural resource enhancements under the Consent Decree is approximately 180,000 square feet.

The United States, Massachusetts, Connecticut and GE have agreed to modify the Consent Decree and SOW to provide that a minor portion of the GE obligation at the Lyman Street parking lot to perform natural resource restoration/enhancements will take place at an alternate location, a riparian strip of land at the East Street Area 2-South area of the Site, of equal or greater habitat value. Specifically, the proposed Third Modification is as follows:

1. With respect to the approximately 180,000 square feet of natural resource restoration/enhancement activities that GE agreed to implement at the Lyman Street parking lot, as specified in Paragraph 118.d(iv) of the Consent Decree, and in several locations in the SOW, including Section 2.8, Attachment I to the SOW, and Figure I-2, the Third Modification provides that GE will reduce the total square footage of such natural resource restoration/enhancement activities by approximately 20,000 square feet. The portion of the parking lot that will not receive natural resource restoration/enhancement activities will be the northernmost part of the paved portion of the Lyman Street parking lot, beginning approximately 350 feet away from the River and extending toward East Street, as shown generally in Figure 1 to this proposed Third Modification of Consent Decree.

2. In order to compensate for the 20,000 square foot reduction of the enhancement at the Lyman Street parking lot, the Third Modification requires GE to perform additional natural resource restoration/enhancement activities at the riparian strip located in East Street Area 2-South at the Site. Pursuant to Paragraph 118.d(ii) of the Consent Decree, SOW Attachment I, Sections 3.0, 3.1, 3.2, 7.0, 8.0, 8.1, and 8.2, and Figure I-1, GE is required to create, in a 200-

foot wide riparian strip located in East Street Area 2-South (as depicted on Figure I-1 of Attachment I of the SOW), which is currently predominantly covered by pavement and buildings, a vegetated buffer through the planting of an herbaceous native grassland community and installation of other habitat enhancements.

Pursuant to the proposed Third Modification, GE shall increase the East Street Area 2-South riparian strip by removing an additional approximately 20,000 square feet of pavement and/or building slabs contiguous with the northern boundary of the original East Street Area 2-South riparian strip shown on Figure I-1 of Attachment I to the SOW, and replacing such pavement and/or building slabs with the planting of an herbaceous native grassland community and installation of other habitat enhancements pursuant to SOW Attachment I, Sections 3.0, 3.1, 3.2, 7.0, 8.0, 8.1, and 8.2. The area for the additional approximately 20,000 square feet of restoration to be added to the East Street Area 2-South location is shown generally in Figure 2 to this proposed Third Modification of Consent Decree. The Trustees for Natural Resource Damages for the Site have determined that, in terms of habitat value, the approximate 20,000 square feet of restoration that will be added to the East Street Area 2-South location is of equal or greater value than the approximate 20,000 square foot portion of the Lyman Street parking lot that will no longer be enhanced.

3. In connection with these actions, GE shall remediate the additional approximately 20,000 square feet contiguous with the northern boundary of the original East Street Area 2-South riparian strip to satisfy the same Decree requirements, including Performance Standards, as those Decree requirements for the original East Street Area 2-South riparian strip.

II. Purpose of this Third Modification

As part of EPA's 1½ Mile Reach Removal Action at the Site, EPA needed and still needs access to areas along the river for remediation equipment. EPA's access needs eliminated a number of parking spaces owned by a car dealership abutting the river. To provide replacement parking, GE temporarily leased to the car dealership an approximately 20,000 square foot portion of GE's Lyman Street parking lot. After EPA's access needs cease, the car dealership has asked that GE enter into a permanent lease of the approximately 20,000 square foot portion. Such a lease would greatly assist the car dealership's operations, and, in the event that the car dealership and GE cannot reach agreement, could assist another business operation. However, such use would permanently prevent that portion of the Lyman Street parking lot from being a suitable location for natural resource restoration/enhancements under the Consent Decree. Accordingly, the United States, Massachusetts, Connecticut and GE have agreed, subject to the Court's approval, that GE will not enhance this approximately 20,000 square foot portion of the Lyman Street parking lot but that GE must increase, by approximately 20,000 square feet, the size of the 200-foot riparian strip at East Street Area 2-South on the Site, thereby providing an alternative enhancement area of equal or greater value. In connection with this latter agreement, the United States, Massachusetts, Connecticut and GE have agreed, subject to the Court's approval, that GE must remediate the additional approximately 20,000 square feet that are added to the original 200-foot riparian strip at East Street Area 2-South to satisfy the same Decree requirements, including Performance Standards, as those Decree requirements for the original East Street Area 2-South riparian strip.

III. Consent Decree Requirements Regarding Modifications

A. Documents Being Modified: Section XXXVII of the Consent Decree provides for execution of modifications under the Consent Decree. Within that Section, Paragraph 215 references modifications to schedules specified in the Consent Decree, Paragraph 216 references modifications to the SOW, the Upper ½ Mile Reach Removal Action Work Plan, or the Rest of River SOW, and Paragraph 217 references modifications to the Consent Decree, not including modifications to the SOW, the Upper ½ Mile Reach Removal Action Work Plan, or the Rest of River SOW.

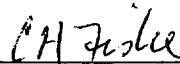
The United States submits this modification pursuant to Paragraphs 216 and 217. The original obligations relating to the two subject areas are referenced in both the Consent Decree and the SOW. The natural resource restoration/enhancements at the riparian strip in East Street Area 2-South are referenced in Paragraph 118.d(ii) of the Consent Decree, and in several locations in the SOW, including Section 2.8, Attachment I, and Figure I-1. The natural resource restoration/enhancements at the Lyman Street parking lot are referenced in Paragraph 118.d(iv) of the Consent Decree, and in several locations in the SOW, including Section 2.8, Attachment I, and Figure I-2. The remediation requirements for the riparian strip in East Street Area 2-South can be found at Paragraph 25.a(i) of the Decree, and in the SOW, including Section 2.2.2 of the SOW.

B. Type of Modification: Section XXXVII also provides different procedures for different types of modifications to the Consent Decree or SOW. Pursuant to Paragraph 217, "... any modifications to the Performance Standards may be made only by written notification to and written approval of the United States, Connecticut, [Massachusetts], [GE] and the Court."

This modification affects the Performance Standards found at Section 2.2.2 of the SOW, and Section 3.1 of Attachment I to the SOW. Accordingly, the United States, Connecticut, and Massachusetts, and GE have entered into the Modification, and the United States is hereby seeking the Court's approval of the Modification. There is a signature line for the Court at the conclusion of the Third Modification.

Respectfully submitted,

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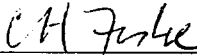
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